

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

CIVIL REVISION APPLICATION NO 1573 OF 1999

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Order ?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the Order ?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

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AKBAR ALI DAWOODBHAI MOMIN  
VERSUS

KAKA KARSHANKAKA SAVJIKAKA  
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Appearance:

MR SURESH M SHAH with MR MI MERCHANT

for the Petitioner

None present for the Respondent  
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CORAM : MR JUSTICE S.K. KESHOTE

Date of Order : 30/12/1999

C A V JUDGMENT

#. Heard learned counsel for the petitioner.

#. The defendant, by this Civil Revision Application challenges the order of Judge, Small Causes Court, Ahmedabad dated 22/9/99 below Exh.5 in H.R.P. Suit No.2259/87 allowing that application and permitting the amendment to be carried out in the plaint as prayed for.

#. The plaintiff-respondent filed the suit against the defendant. The plaintiff is a Trust and the suit is filed by the Chairman of the Trust. From the original plaint it appears that the name of the Chairman of the Trust has been mentioned, but the suit has been filed by the Trust. The trust is a registered trust and the property belongs to the Trust. The defendant-petitioner as per his case executed Rent Note on 24/12/85 and that was signed by the Chairman of the Trust. The Chairman is stated to be permanent Chairman. The suit has been contested by the defendant-petitioner Exh.20 is written statements of the defendant. In the original written statements, the defendant-petitioner has not raised that the suit is not maintainable as all the trustees have not been added. The defendant-petitioner filed an application dated 23/11/98 for amendment of the written statement wherein the contention is raised that all the trustees of the Trust have not been added and therefore, suit of the plaintiff-trust is not maintainable. This application gives rise the occasion and the cause to the plaintiff-respondent to move an application to overcome this objection sought to be raised by the defendant-petitioner regarding nonjoinder of the necessary parties. The plaintiff-respondent by this application prayed for joining the persons mentioned in the application at Sr. No.2 to 9 as plaintiffs and Shri Nirudin Babamiya Saiyed and Asrafali Abbasali Saiyed as defendant Nos. 2 and 3. As usual this application has been opposed by the defendant-petitioner.

#. I fail to see any justification in this opposition of the application by the defendant-petitioner. The defendant-petitioner has not originally raised any objections that the suit is not maintainable for nonjoinder of all trustees of the Trust as parties to the suit. When this is sought to be raised as a ground for dismissal of the suit by a tenant defendant-petitioner naturally the plaintiff-respondent has to take care and to overcome this objection rightly the application has been filed and the court below has not committed any material irregularity in exercise of its jurisdiction in granting the amendment. It is always permissible to the court to allow such an amendment in the plaint and

precisely what it has been done. The amendment is necessitated in the plaint because of the application for amendment of the written statement filed by the defendant on 23/11/98. It is a just and reasonable order passed by the court below. In fact opposition of such application by the defendant-petitioner in the facts of this case is not bona fide. There appears to be no mistake in filing of the suit because in the rent note the Chairman has also signed it. The Chairman in suit is not claimed himself to be owner of the property. He claims it to be a property of the trust. Where all the trustees are not joined as parties to the suit and objection is raised that suit is not maintainable, when this defect in description of the parties is sought to be corrected, I fail to see how such an objection can be raised by the defendant-petitioner. No cause of action has been changed and the suit what it was originally remains to be a suit for eviction of the tenant from the suit premises. By grant of such an amendment no prejudice will be caused to the defendant-petitioner and even it cannot be said to be a case where there is some delay in raising this plea. The defendant-petitioner himself has pointed out a defect in the suit and immediately thereafter necessary steps are being taken by the plaintiff to cure this defect and the court below has not committed any illegality in permitting the same to be made good by him.

In the result, this revision application fails and the same is dismissed. Rule discharged. As none put appearance for the respondents, no order as to costs. Interim relief stands vacated.

(S.K.Keshote, J.)

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